

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of:)	
)	
Implementation of Pay Telephone)	
Reclassification and Compensation Provisions)	CC Docket 96-128
of the Telecommunications Act of 1996)	
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Petitioners' Alternative Rulemaking Proposal)	
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**COMMENTS OF
INNOCENCE PROJECT AND
THE INCARCERATED MOTHERS PROGRAM
REGARDING PETITIONERS' ALTERNATIVE
RULEMAKING PROPOSAL**

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STATEMENT OF INTEREST

The Innocence Project, Inc., is a nonprofit legal clinic and criminal justice resource center. Founded by Prof. Barry Scheck and Peter J. Neufeld at the Benjamin N. Cardozo School of Law in 1992, the Project provides *pro bono* legal services to indigent prisoners for whom post-conviction DNA testing can provide conclusive proof of innocence. The Project pioneered the litigation model that has to date exonerated 200 innocent persons by post-conviction DNA testing and has served as counsel in the majority of those cases. As such the Project has represented innocent members of society affected excessive phone rates levied against family members who pay for the collect calls their loved ones make from prison. These family members have made deep financial and personal sacrifices to maintain telephone contact with incarcerated relatives ultimately proven innocent by DNA evidence. Currently, the Project represents incarcerated clients across the country, who have maintained their innocence (some for decades), and are trying to obtain biological evidence that may exonerate them.

The Incarcerated Mothers Program (hereinafter “IMP”) is a program of Edwin Gould Services for Children and Families, which has 65 years of experience, and is currently one of the largest minority administered foster care agencies in New York City. Edwin Gould also provides permanency services, post-adoption services, residential services, intermediate care services, health and mental care, preventive services, domestic violence services, job readiness training and supportive services for families affected by maternal incarceration. IMP joins this brief as an organization that advocates on behalf of the children of current inmates and their caretakers, who pay for the collect phone calls

that enable these children to preserve a relationship with their incarcerated mothers and fathers.

Both organizations maintain extensive relationships with the incarcerated and their families. We hope that their real world experiences of our clients will enable the court to understand the human issues underlying the legal analyses and to comprehend the severity of the actual injuries excessive phone ‘surcharges’ can cause to the families of prisoners. We write, then, to share our experiences and to detail the drastic affects similar surcharges have on the ability of families to communicate with loved ones who are incarcerated, and ultimately to support the Alternative Rule Making Proposal currently before the Federal Communications Commission.

COMMENTS REGARDING THE ALTERNATIVE RULE MAKING PROPOSAL

Introduction

Incarcerated individuals comprise a particularly vulnerable population that faces obvious barriers to maintaining connections with family members in the community. Cultivating these connections, however, is absolutely essential to ensuring the integrity of the family unit for the obvious benefit of the inmate, family, as well as society. Numerous studies have shown that close family ties help reduce inmate recidivism. Because other avenues of communication in prison are greatly limited, phone communication provides inmates and their *families* with the most effective means of maintaining their relationships. The clients of *Amici* and their relatives overwhelmingly attest to the direct, positive correlation between telephone usage and subsequent quality and quantity of familial relations.

The unduly high rate structures in question here, however, impose a financial burden so great as to render reasonably regular telephone contact impossible for many inmates. The subsequent adverse effects of this structure on the quality of familial relationships and transitions post-release are easily evident. For these reasons, we respectfully urge that the Federal Communications Commission take corrective measures to eliminate the excessive and unjust rates set forth in Petitioner Martha Wright's Alternative Rule Making Proposal. The Commission should adopt the proposals of the Wright Petition by establishing benchmark rates for long-distance calls from prisons, eliminating the per-call charges, and requiring prison service providers to offer debit calling. These proposals would provide a fair system for family members who bear the

burden of these calls and provide needed and reasonable phone services so that these families may remain intact.

I. The Importance Of Reasonable Phone Rates In Maintaining Meaningful Relationships With Inmates and Their Families

(a)

To begin, it is without question, that there is an overwhelming societal interest in preserving communication between prisoners and their families, and with society at large. It has long been recognized that “certain kinds of personal bonds have played a critical role in the culture and traditions of the Nation by cultivating and transmitting shared ideals and beliefs [].” *Roberts v. United States Jaycees*, 468 U.S. 609, 618 [1984]. Moreover, “the constitutional shelter afforded such relationships reflects the realization that individuals draw much of their emotional enrichment from close ties with others.” *Id.* at 619. We do not in our comments seek to provide an extended analysis of the scope of those rights. Rather, we write to detail the best means today of preserving those bonds at a critical juncture in the lives of these families, and at a critical juncture for society, which will seek to reunite inmates with families and reintegrate them within the fabric of our communities. Phone rates must be reasonably tied to the cost of phone services, so that inmates and family members will not have their ties severed arbitrarily by excessive and punitive phone surcharges.

For inmates, the circumstances of their incarceration plainly limit their ability to maintain these “close ties” with family members, and serve to make the connections that they are able to preserve all the more precious. The most dramatic evidence arises in the medical literature on prison suicides: inmates incur a greater risk of suicide than the

general population, and in one recent study of over 3,000 inmates, a perceived lack of social support significantly increased an inmate's likelihood of attempting suicide by more than thirty-fold.¹ Communication with loved ones not only mitigates the unnecessary suffering experienced during incarceration, but also lends itself to improved re-assimilation of the former inmate back into the family and community at large upon release. See ABA Standards for Criminal Justice 23-6.2, Commentary (2d ed. 1980) ("Because almost all inmates ultimately will be returned to the community at the expiration of their terms, it is important to preserve, wherever possible, family and community ties.")

The effect of a parent's incarceration on her children is particularly devastating. Beyond the immense damage to children's emotional and physical well-being that can result from instability and long-term separation lies a pronounced risk of losing these children to the criminal justice system and substance abuse.² Research has shown that children of incarcerated parents are seven times more likely to become involved in the juvenile and adult criminal justice systems.³ However, research has also demonstrated that preserving the parent-child relationship through continued contact *while the parent is incarcerated* can be truly helpful to a child's development. It allows them to feel loved rather than abandoned or rejected.⁴ Furthermore, a positive parent-child relationship has

¹ See R. Jenkins, D. Bhugra, H. Meltzer, N. Singleton, P. Bebbington, T. Brugha, J. Coid, M. Farrell, G. Lewis & J. Paton, "Psychiatric and social aspects of suicidal behavior in prisons." 35 *Psychological Medicine* at 257-69 (2005).

² IMP Objectives and Descriptions at 3, *supra* note 1.

³ *Id.* citing US Department of Health & Human Services Program Announcement No. ACYF/FYSB 2003-02), "What are the effects of incarceration on the child?" at 4.

⁴ *Id.* at 2 citing Lois E. Wright and Cynthia B. Seymour. "Working With Children and Families Separated by Incarceration" 60-61, CWLA Press, Washington, DC (2000).

been definitively shown to contribute to inmates' rehabilitation.⁵ Therefore, it is undeniable that extensive contact is optimal not only for the benefit of the inmates and their children, but also society at large in ensuring that the cycle of incarceration does not continue.

(b)

The reasoning behind specifically preserving a prisoner's right to communicate by telephone is abundantly clear; while letter-writing and visitation may allow for limited contact between inmates and family members, the unique nature of a telephone call offers an unparalleled opportunity to preserve the integrity of the family unit. It is impossible to recreate the instantaneous nature of telephone communication; while letter-writing and visits provide family news and offer personal interaction, for prisoners they are intermittent and in some instances, non-existent. For example, our exonerees personally recall how important it was during times of sadness, stress or excitement to be able to reach out *at that moment* to their family members by phone, instead of waiting weeks for a letter to arrive or for a prescribed visiting day.

For younger children – approximately 13,000 New York children currently have a mother in jail or prison and 58% of these children are under the age of ten⁶ – letter writing is nearly impossible. If such children need to communicate with a parent by mail, they must have an intermediary write their thoughts for them and read to them any response. Needless to say, such communication completely destroys the confidentiality and intimate quality of parent-child bonding. For infants and toddlers who do not have a

⁵ *Id.*

⁶ *Id.* at 2 *citing* Julie Kowitz & The Women in Prison Project of the Correctional Association, (forthcoming 2003) "The Collision of Child Welfare and the Incarceration of Women in New York"

full grasp of language, this limited form of communication by letter is truly unavailable. However, even the youngest child can still communicate with their parent by phone – *amici* are aware of examples of incarcerated mothers who call every evening to sing to their babies the same lullaby, and to say goodnight to older children. It is impossible to minimize the impact of such constant vocal contact at a young age, and it is unquestionably the kind that cannot be duplicated by a letter. For older children, being able to deal with *real issues in real time* is imperative for the preservation of the parent-child role: if a child has a disciplinary issue at school, or any other problem that requires parental attention, by the time a letter reaches the incarcerated parent and he/she authors a response, the issue has become stale or may have worsened.

Moreover, relying on letter writing to communicate effectively is not an option for inmates or family members who suffer from any of a host of common medical conditions that would complicate or preclude writing: physically limiting conditions like arthritis, peripheral neuropathy (commonly associated with diabetes), carpal tunnel syndrome, parkinsonism, tremor, and stroke; conditions that limit visual acuity such as macular degeneration and cataracts; or other conditions such as dyslexia or mental retardation. In addition, educational deficiencies, such as illiteracy, greatly limit the ability to communicate with the same fluency as by telephone.

It is irrefutable that we live in a telephone-oriented society. The overwhelming prevalence and usage of phones makes it impossible to underestimate the importance of phone contact to modern communication. Although one might plead that letter writing still exists as an alternative to telephone communication, it is simply not an excessive statement to say that as a society we simply no longer use the post for primary

communication, as the quality of telephone communication – encompassing both verbal and auditory information exchanged in real time – dwarfs that of letter-writing.⁷

Finally, it should be of particular concern that the impact on the ability to pay excessive rate fees is directly correlative with financial affluence. While more wealthy families will be able to absorb the cost of the surcharges and ostensibly enjoy unfettered phone communication with their incarcerated relatives, the poor, who compose the majority of the inmate population, are disproportionately affected by the increased rates. This systematic discrimination against efforts by the relatively disadvantaged to communicate with their families cannot be abided.

(c)

Furthermore, there are serious limitations on family members' ability to physically visit an incarcerated relative. Many family members live a *considerable distance* from the correctional institution, which either prohibited them from visiting on a regular basis, or in some cases, at all. In New York State, for example, the physical distance between most prisoners and family members means that in order to maintain communication, phone calls are a necessity: more than 80% of the state's prisoners come from poor New York City neighborhoods, while two-thirds of prison facilities are located *three hours or more* from New York City.' This distance demands that many relatives of

⁷ The United States Postal Service has reported sharp declines in revenue and First Class Mail volume, which it expects to continue because of the substitution of electronic technologies for traditional mail. See <http://www.usps.com/financials/pdf/Q12004QtrlyReport.pdf>. (last visited November 29, 2006)

⁸ See Claudio Cabrera, "Punishing Phone Call Tax For Families of Incarcerated," *Amsterdam News*, February 8, 2006. Available at <http://www.indypressny.org/article.php3?ArticleID=2489> (last visited November 29, 2006).

inmates plan for an entire day's absence from normal routines to make the six hour round trip, taking time off of work, finding childcare, and paying for transportation, food, and lodging.' Furthermore, it is extremely unlikely that the caregiver of a child with an incarcerated parent will facilitate visitations to the prisons or jails. Indeed, approximately one-half of all incarcerated parents receive no visits from their children, and others receive only infrequent visits."

As demonstrated by the case examples below, the telephone is an irreplaceable means of communication and was often the only method whereby our clients were able to maintain familial relationships. Indeed, even prison authorities have set forth in their own publications that telephone access is a crucial aspect of maintaining family connections. In their 2003 press release entitled, "Inmate pay phone access fosters family ties, enhances security for all,"¹¹ The New York State Department of Corrections asserts: "At first blush, one would be hard pressed to identify the debate [on controls on phones and commissions]: since studies have shown maintenance of family ties reduces recidivism, it would seem allowing inmates such a privilege [use of telephones] would benefit all New Yorkers."¹² The case examples of recent New York exonerees bear out the importance of

⁹ See Johnna Christian, "Riding the Bus: Barriers to Prison Visitation and Family Management Strategies," 21 *Journal of Contemporary Criminal Justice*, No. 1 at 31-48 (February 2005) ("The costs associated with one visit are a minimum of \$80 and could easily be twice that amount. This is assuming that there is only one family member visiting and does not include other expenses such as childcare. In addition to these monetary costs, the journey to a visit is extremely tiring and time consuming. [] Buses to the farthest facilities leave New York around 9:00 PM to arrive in time for visiting hours at 9:00 AM the next morning.")

¹⁰ IMP Objectives and Descriptions at 2, *citing* Lois E. Wright and Cynthia B. Seymour, "Working With Children and Families Separated by Incarceration" 60-61, CWLA Press, Washington, DC (2000).

¹¹ DOCS Position Paper at 1.

¹² *Id.*

telephone communication and the need for the Commission to act to abolish excessive fees.

11. Case Examples Of Exonerees Attempting To Maintain Familial Contact While in Prison

The following examples offer the cases of five Innocence Project exonerees and their family members who directly experienced an exorbitant rate hike by the New York State Department of Corrections in 2003, and the cases of two exonerees who, although not directly affected by the hike, have experienced the importance of telephone contact in maintaining family connections. New York Governor Elliot Spitzer has since rescinded the 57.5 percent commission for the Department of Corrections on prison inmate calls.¹³ Also except for one exoneree the calls were within the state of New York, rather than interstate calls. The experiences of these exonerees, however, remain illustrative of the harms that are caused by unfair commissions and they highlight importance of communication by phone for inmates and their families.

a. Barry Gibbs

On March 25, 1988, after a **jury** trial, Barry Gibbs was convicted of Murder in the 2nd Degree, and sentenced to twenty years to life. Barry was painfully aware when the collect call increase came into effect because it made a difficult situation worse. His cash-strapped parents were sick, elderly, living on a fixed income, and could already barely afford to accept his single thirty-minute phone call each month. They corresponded primarily by mail, but Barry found it a poor substitute for those rare telephone calls. For Barry, just to hear his parents' voices meant everything, particularly

¹³ Editorial, *A Good Call in New York*, N.Y. Times, Jan. 10, 2007.

when their health declined. He could tell how his mother was feeling through her voice: when it would quiver he would know she was doing poorly, or when it was strong he could tell she was feeling better.

In fact, telephone calls were essentially the only time he had any personal contact with his parents. Due to their physical and financial limitations they were rarely able to visit and the last time they saw Barry before his release was 1995. Needless to say, when Barry was finally exonerated in September 2005, his transition back to society was both painful and difficult. His mother had died eight months before his release, his father passed away two months post-release. He had lost contact with almost all his other family members and friends, many of whom could only afford the call once a month. That frequency was painfully inadequate in the context of his mother's illness and death. Not surprisingly, Barry feels like everything has been taken away from him because of his wrongful incarceration, a tragic situation exacerbated by the high cost of collect phone calls from New York State prison, which limited his ability to communicate and maintain relationships with the friends and family he would need most after his release.

b. Jeff Deskovic

In January 1991, 18-year-old Jeff Deskovic was convicted by jury of the 1st degree rape and 2nd degree murder of a 15-year-old classmate, despite DNA results showing that he was not the source of semen in the victim's rape kit. In January 2006, the Innocence Project took on Jeff's case. The semen from the rape kit was tested with newer technology for entry into the New York State DNA databank of convicted felons. In September 2006, the DNA profile was matched to convicted murderer Steven Cunningham, who was in prison for strangling the sister of his live-in girlfriend. On

September 20, 2006, Jeff was released from prison when his conviction was overturned. Following an apology from the Assistant District Attorney, the court dismissed Jeff's indictment on the grounds of actual innocence on November 2, 2006.

Throughout the sixteen years that Jeff was incarcerated, he tried desperately to remain in contact with his family and friends. Like so many other prisoners, he found that letters were insufficient to provide him with the emotional connections he needed. By the time letters were exchanged with his family, the thoughts and information contained within were no longer current. Also, the great distance between his family's residences and his correctional facilities meant that visits were infrequent, especially from his mother, whose vehicle (the only way she was able to travel to his prisons) was in constant need of repairs that she could ill afford to make. Ultimately, Jeff discovered that the best way for him to keep in contact with his family was by telephone. It was an easy, rewarding, and convenient method of contact that could still bridge what he sometimes felt to be a growing distance between himself and his family members. However, because cost was already an issue for both his family members and friends, when MCI prices suddenly skyrocketed in November 2003, communicating by telephone actually became painful. Jeff would feel guilty and inadequate when he would call, knowing how much it cost his family each month to accept the charges and recognizing that he had no money of his own to help subsidize the bills. This guilt would be reinforced when his mother, who was living on a fixed income, told him not to call as often or for so long.

The result was that when Jeff called his family, specifically his mother, he would already have a list in his head of things he needed to discuss, so that he could fit everything he needed to say into as short a time as possible and minimize the cost of the

call. Ultimately, the most common subject of discussion became the work that Jeff needed family members, particularly his mother, to accomplish for his ongoing legal battles, and leaving little time to discuss personal issues.

Jeff believes his relationship with his mother suffered greatly during this time. She would often ask him why he didn't ask about her life or tell her more about what was going on with him, faulting him for only wanting to talk about what he needed her to do for him. The high cost of phone service drove other cost-conscious family members, particularly his aunts and uncles, to refuse to accept his collect calls. The loss of the ability to contact these loved ones caused the relationships to wither, which hurt him greatly.

Not surprisingly, adapting to life post-release has been difficult for Jeff. He doesn't feel as though his family knows who he is as a person, nor does he feel that he knows them the way he would want. The long years of communication difficulties – caused in chief by the high cost of phone calls – have left Jeff without a vital support structure to help him adjust to a world that he doesn't quite understand.

c. Douglas Warney

Douglas Wamey was convicted in 1997 of second degree murder and sentenced to 25 years to life in prison. The Innocence Project and Donald M. Thompson began working on Douglas' case in 2004 and sought DNA testing of blood from the remaining evidence. The DNA profile recovered from biological material matched Eldred Johnson, Jr., a New York state inmate already serving a life sentence for other crimes, who eventually confessed to the murder for which Douglas was sentenced. On May 16, 2006, Douglas' conviction was vacated and he was released from prison.

While he was incarcerated, Douglas had particular need for family support due to his limited education, mental health issues, and other illnesses brought on by advanced AIDS. However, his Rochester-based family was sorely curtailed in their ability to travel the long distances required to visit him. For example, when Douglas was incarcerated at the Clinton Correction Facility, his family would have to drive eight hours each way in order to visit him. These long car rides were particularly difficult for his sister Audrey -- who suffered such severe chronic back pain that she required surgery while her brother was in prison -- and for his mother, who was diabetic and suffered from urinary retention. The visits were understandably infrequent.

Furthermore, phone calls, although extremely desirable, were often cost-prohibitive -- even before the MCI rate hike in November 2003. Because of her limited single income, Audrey was unable to maintain long distance phone service and could only communicate with her brother by mail. Douglas was occasionally able to call his other sister, Debbie, but she had to ask her brother to keep his phone conversations limited to ten minutes or less, so that she could afford to pay her phone bill at the end of the month. There were also instances where Douglas would call other family members, only to have his phone calls refused, he was told, because of the high cost.

Because of the limited contact that Douglas had with family members, his readjustment to society has been understandably difficult. The inability of the family to afford his phone calls made Douglas feel like they had abandoned him while he was in prison, and, according to both Audrey and Douglas, he needed time to work out his anger at the family when he was exonerated. Douglas, Debbie and Audrey agree that because most of their contact was in writing, they were unable to experience the same level of

emotional contact they would have had if they had been able to speak more often by telephone. Audrey particularly feels like it was “hard when Douglas came out because [she] hadn’t been able to talk to him [by telephone] in prison.”

d. Scott Fappiano

In 1985, Scott Fappiano was convicted of the brutal rape and assault of the wife of a New York City police officer. He spent the next 21 years in a host of New York State correctional institutions until post-conviction DNA testing proved his innocence in 2006. Scott, who remained steadfast in his belief that he would someday be vindicated, worked assiduously throughout his incarceration to make sure that he remained deeply connected to his large family and his Brooklyn and Staten Island community, so that when he did go home, the passing time would not erode his ability to re-assimilate. However, because Scott was, for the most part, incarcerated in upstate New York facilities – some more than 8 hours outside the city by car -- family members – especially his mother, Rose, who suffers from emphysema – were severely limited in their ability to visit him. Indeed, Mrs. Fappiano would have to rely on family members for rides in order to visit her son, because she was unable to transport her oxygen tank by bus. Scott also felt that letters, while always welcome, didn’t provide him with the kind of interaction he needed to remain a real presence in his family; a phone call or a visit was “a thousand times more personal,” allowing him to directly feel the emotion of the person with whom he was communicating.

Furthermore, he found the mail to be frustratingly slow; often by the time a letter arrived – whether it was bringing family news or an update about his fight for innocence – its content had been superseded by an intervening event. It was ultimately through

frequent collect phone calls to his extended and close kin that Scott discovered a milieu he felt allowed him to really *participate* in his family, and stay fully present in a world he anticipated someday rejoining. Indeed, relatives were often stunned by the fact that Scott knew more about current family events than they did, and actually received some of their neighborhood gossip from him.

Accordingly, Scott and his family were drastically affected by the increased cost of collect calls around November 2003. Rose Fappiano suddenly found herself paying approximately \$50.00 more per month per phone call and, due to her limited finances, was forced to ask Scott not to call as frequently. The result was that Mrs. Fappiano experienced episodes of panic during Scott's prolonged absences from calling, because she had no other immediate way of knowing that he was all right. Scott tried not to call his mother so often, because he too worried about the increased cost. Further complicating his contact with family members was the fact that MCI would block collect calls to persons who were late in paying their telephone bill -- an amazingly common occurrence after the rate hike. Indeed, Scott remembers that at one time, each of the 15 members of his call list was blocked from receiving his phone calls.

e. Alan Newton

In May 1985, Alan Newton was convicted of rape, robbery, and assault charges stemming from a brutal attack on a young woman in the Bronx. In 2005, at the Innocence Project's request, the district attorney's office located the victim's rape kit after an exhaustive search. Post-conviction DNA testing on the remaining biological material proved conclusively that Alan was not the perpetrator of this crime. Alan was exonerated in July 2006 after spending 22 years in prison for a crime he did not commit.

During his many years of wrongful incarceration, the telephone became a “life line” for Alan. It allowed him to preserve his tight knit family connections in prison in a way for which other methods of communication available to him – writing or visitation – fell short. For example, when there were feelings or emotions that he needed to unburden, a phone call from home was like “a personal touch” that was both immediate and heartwarming. Over the telephone, Alan was able to learn about the minutiae of everyday events, help resolve disagreements between family members as they occurred, and keep abreast of the important occurrences in his family’s life.

Although Alan enjoyed receiving mail, he would dread the wait that a response to one of his letters would require – after sending a letter he would often feel himself “burning up” with worry that there would be no response at all. A letter also lacked the spontaneity of a phone call, and Alan felt as if he was better able to express his fears, anxieties, as well as his love for his family, when he was able to talk to them – rather than trying to capture those powerful sentiments by letter. Furthermore, although visits from relatives were an irreplaceable aspect of maintaining familial connections, the physical distance between his relatives’ homes in New York City and his upstate prison facilities meant that visits were sporadic, and for some of his more elderly relatives, impossible. Indeed, when Alan was incarcerated in Attica, he actually discouraged family members from visiting him at all, because he was reticent to have his loved ones travel the 16 hour round trip between the prison and their homes, only to arrive at a facility always ill-equipped to handle the number of visitors, and have their visiting time drastically curtailed.

Not surprisingly, before, and even more so after the MCI rate hikes in 2003, the high cost of telephone service severely limited the Newton's ability to preserve their deep family ties. Raymond Newton, one of Alan's brothers, recalls spending as much as \$125.00 per month on telephone calls solely from Alan – the same amount he spent on his car payment -- and paying other bills, such as credit cards, late so that he could keep the phone active. Despite his best efforts to maintain an open phone line for his brother, both through setting money aside for this purpose and contacting MCI multiple times regarding charges he believed were extraneous, he reports that it became too much, and he stopped paying his MCI bill. As a result, around 1999, Raymond's ability to receive collect calls from New York State prisons was discontinued. That left Alan's other brother Anthony ('Tony'), responsible for making sure that Alan always had a phone that he could call. Tony remembers promising Alan that "if I don't do anything else, I'm going to keep the phone on for YOU." That promise was sorely tested after the rate hike in November 2003, when skyrocketing prices made it difficult for Tony, and the rest of Alan's family who could still receive phone calls, to afford service. Alan learned that the best way to help his family was to become disciplined about spreading his phone calls throughout his large family – calling his brother one week, a nephew or niece the next, and allowing them to pass information to the rest of the family. The result was that Alan was able to experience with his family the changes they went through during his incarceration and to be present and active to the fullest extent possible in their lives. Indeed, Alan remembers that speaking to his family by telephone was often "the next best thing to being home."

f. Eddie James Lowrey

In 1981, nineteen-year-old Eddie James Lowery became a suspect in the rape and assault of an elderly woman after being involved in a traffic accident near the victim's house. He was convicted in January 1982 of rape, aggravated burglary, and aggravated battery and sentenced to 11 years to life in prison. He served 10 years of that sentence and was released on parole in 1991. Lowery was able to procure DNA testing on the remaining biological evidence in 2002, and was excluded from being the contributor. In April 2003, the District Court of Riley County, Kansas, vacated the judgment and conviction based on these results.

Because Eddie was incarcerated in Kansas and his family resided on the West Coast, visits from his family were almost impossible – indeed, his parents didn't visit him until his fourth year of incarceration – so there was no way for him to enjoy any sort of intimate family contact, except to speak to his relatives by telephone and by sending and receiving letters. Although Eddie cherished the letters he received – sometimes reading them three or four times -- it was through phone calls, and being able to hear his parents' voices that he felt truly able to separate himself from the prison mentality he had been forced to adopt, and relate to his parents as a son, instead of an inmate. It is unsurprising, therefore, that Eddie characterizes his collect calls from prison as a “life support system” and credits them with saving his relationship with his parents.

g. John Restivo

In 1986, John Restivo was convicted of the rape and murder of a sixteen-year-old girl in Lynbrook, New York. After spending almost seventeen years in prison, John was released on June 11, 2003, after biological evidence preserved from the crime scene

excluded him as the perpetrator of the crime. For John's mother, Frida Restivo, the seventeen years of his incarceration felt like a prison sentence for her as well. She was constantly worried about the well-being of her son – she feared there might be reprisals against him by other inmates him due to the nature of his crime (his conviction was for the violent rape and murder of a teenage girl), and she worried that his incarceration might alter him into a person that she would no longer recognize.

Further exacerbating her anxiety was the fact that during his incarceration at the Clinton Correctional Facility, she was separated from her son by almost a sixteen hour round trip drive. As a result, she was able to visit him only once in the initial four to five years of his incarceration. Although she was finally able to visit him on a more frequent basis after his transfer to the Green Haven Correctional Facility, she believes that they might have lost touch with each other had she not had the ability to speak to him by telephone throughout his incarceration. Frida relished those occasional phone calls – especially since hearing his voice on the telephone would temporarily assuage her anxiety and allow her to peacefully enjoy her mother-son relationship with him. Because of the immense value that she placed on those phone calls, Frida, a widow on a fixed income, sometimes ate nothing but soup and hot dogs to make sure that she would be able to pay her phone bills, which were in the hundreds of dollars.

John notes that life post-exoneration was difficult – he emerged into a totally different world replete with technology he was unfamiliar with, cultural references he didn't understand, and insecurity about what he was going to do with the rest of his life. John credits the strong relationship he maintained with his family in prison, for making

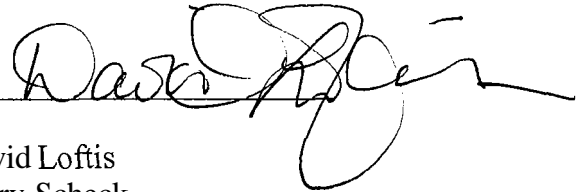
sure that this difficult transition was successful, and relied on their love **and** patience to help him make that difficult adjustment.

Conclusion

For the reasons stated we respectfully request that the Commission establish benchmark long distance rates, eliminate per-call charges, and require prison service providers to allow debit calling.

Respectfully Submitted,

BY

A handwritten signature in black ink, appearing to read "David Loftis", written over a horizontal line.

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